

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE JACKSON,

Defendant-Appellant.

UNPUBLISHED

June 23, 2005

No. 254994

Wayne Circuit Court

LC No. 03-012989

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for first-degree murder, MCL 750.316, felonious assault, MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to life imprisonment for the murder conviction, one to four years' imprisonment for the felonious assault conviction, and five years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's sole issue on appeal is that there was insufficient evidence presented at trial to support his conviction for first-degree premeditated murder. Specifically, defendant contends that there was insufficient evidence of premeditation and the evidence showed adequate provocation, and that he should have been convicted of voluntary manslaughter instead. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

The elements of first-degree murder requires a showing that the defendant's actions caused the victim's death, the defendant intended to kill the victim, and "the act of killing was premeditated and deliberate." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). "Although there is no specific time requirement, sufficient time must have elapsed to allow the defendant to take a 'second look.'" *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). The *Plummer* Court described the factors to be considered to establish premeditation, including

(1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. [*Id.* at 300.]

Based on our review of the record, we conclude that that there was sufficient evidence to support defendant's first-degree murder conviction. There was strong evidence that defendant had time to reflect on his actions. Defendant's argument with Elaine Scott and Anthony Bostic was interrupted by defendant's departure, to his own home, where he went inside. There was testimony by Scott that it took five to eight minutes before defendant returned with his weapon, an AK-47, which he used to shoot Bostic.

Defendant's written statement noted as follows:

Q. Do you know the man you shot?

A. I don't know his name. He's come over to chastise me before about my cousin's car that had been parked near Elaine's driveway. . . . One other time he came over when I was sitting on the porch but Elaine Stopped him.

Q. Why did you shoot the man?

A. Because he knocked me to the . . . ground. I was tired. . . . I was trying to avoid his [expletive deleted]. . . . When he pushed me, that was the straw that broke the camel's back.

Thus, there was evidence of a longstanding grievance against Bostic. The fight over the leaves was merely the last in a series of events. Defendant already had his weapon by his couch. There was also evidence that defendant had loaded his rifle just prior to the shooting, which demonstrates another opportunity for defendant to reflect on what he was doing.

Additionally, after shooting Bostic from his porch, defendant walked over to him, while he was lying on the ground, and shot him again. Police witnesses observed that defendant was not irate following the incident and was not shouting, but was very calm. Defendant's statements after the shooting further support a finding of premeditation. Defendant stated to a police officer that Bostic "wouldn't push me down. I'll kill the" Defendant said he "sprayed" Bostic, that he would "cut all these people," and that "[no one's] gonna push me down . . . in front of my son. . . ." A rational jury could have reasonably interpreted defendant's comments and actions as evidence of premeditation and deliberation.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Christopher M. Murray